

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE S. EAST-PALMER and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, Bethesda, MD

*Docket No. 01-729; Submitted on the Record;
Issued October 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant timely filed a claim for continuation of pay; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for review of the written record.

On May 22, 2000 appellant, a 60-year-old biologist, filed a traumatic injury claim alleging that she hurt her back while performing her job duties on April 13, 2000. She also requested continuation of pay (COP). Appellant ceased working on April 18, 2000 and returned on May 22, 2000.

On July 11, 2000 the Office advised appellant that her claim had been accepted for lumbar strain and herniated nucleus pulposus (HNP) at L5-S1. However, the Office informed appellant that she was not entitled to COP for her absence from April 18 to May 21, 2000. The Office explained that the denial was based on appellant's failure to report her injury within 30 days of its occurrence.

By letter dated August 10, 2000 and postmarked August 11, 2000, appellant requested a review of the written record. In a decision dated October 5, 2000, the Office found that appellant did not submit her request for review of the written record within 30 days of the Office's July 11, 2000 decision and, therefore, was not entitled to a review of the written record as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issues could equally well be addressed through the reconsideration process.

The Board finds that appellant did not timely file her claim for COP.

Section 8118 of the Federal Employees' Compensation Act provides for the "[COP] of an employee ... who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in

section 8122(a)(2)” of the Act.¹ This latter section, in conjunction with section 8119 of the Act, provides that “written notice of injury” shall be given within 30 days after the injury.² Additionally, the implementing regulations provide that to be eligible for COP a person must file “Form CA-1 within 30 days of the date of the injury.”³

In this case, appellant filed her Form CA-1 on May 22, 2000 for a traumatic injury that occurred on April 13, 2000. The record indicates that appellant obtained a Form CA-1 on April 17, 2000. She explained that she chose not to leave the Form CA-1 with her supervisor because he was out of his office on April 17, 2000 and his secretary was unsure when he would return. Appellant added that, while she left medical documentation regarding her condition on her supervisor’s desk, she did not leave the Form CA-1 because she thought she should explain to him exactly what had happened in his absence. Appellant did not submit her claim until she returned to work on May 22, 2000. She stated that the pain resulting from her injury made it “nearly impossible” for her to make the approximate 1½-hour commute to her office to submit the necessary form.

Appellant filed her claim 39 days after her accepted employment injury of April 13, 2000. The Act and implementing regulations are specific on the timeframe for filing a claim for COP. Inasmuch as appellant did not file her Form CA-1 within 30 days of her date of injury, she is not entitled to COP. However, as the Office correctly explained in its July 11, 2000 decision, the denial of COP does not preclude appellant from receiving wage-loss compensation, as distinguished from COP, for any disability she may have sustained as a consequence of her April 13, 2000 employment injury.⁴

The Board further finds that the Office properly denied appellant’s request for review of the written record.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.⁵ However, the Office has discretion to grant or deny a request that

¹ 5 U.S.C. § 8118.

² 5 U.S.C. §§ 8119(a), 8122(a)(2).

³ 20 C.F.R. § 10.205(a)(2) (1999). Although the regulation specifies the filing of a Form CA-1, it notes parenthetically that if Form CA-1 was not available, the use of another form would not alone preclude receipt of COP. *Id.*

⁴ *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁵ 20 C.F.R. § 10.616(a) (1999).

was made after this 30-day period.⁶ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁷

Appellant's request for review of the written record was postmarked August 11, 2000, which is more than 30 days after the Office's July 11, 2000 decision. As such, appellant is not entitled to a review of the written record as a matter of right. Moreover, the Office considered whether to grant a discretionary review, and correctly advised appellant that the issue of whether she timely filed her claim for COP could equally well be addressed by requesting reconsideration.⁸ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for review of the written record.

The decisions of the Office of Workers' Compensation Programs dated October 5 and July 11, 2000 are hereby affirmed.

Dated, Washington, DC
October 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁶ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁸ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).